Were NUJS Online Courses Illegal? Yes.

Written by Arjun Agarwal, in purely personal capacity

TL;DR: *iPleaders-run NUJS online courses were started in 2012 and ran up to 10.05.2018 in evident violation of the statutorily-mandated regulator, Distance Education Bureau, University Grants Commission's then extant regulations. Under the extant regulations, running online and hybrid courses was outrightly not permitted. In 2009, the Hon'ble Supreme Court of India had already settled that the extant rules and regulations, as mandated by the UGC, had statutory force and were therefore mandatorily applicable to all Universities.*

Recently, Mr. Abhyuday Agarwal, Co-founder and Chief Operating Officer, Intelligent Legal Risk Management Solutions LLP (**iPleaders**), authored a piece titled '*Are NUJS Online Courses Illegal?*' An advance copy of the said piece was shared with me. I write this seeking to clarify my stance on the contents of the said piece. After I shared an advance copy of my original write-up with iPleaders (the text in black), iPleaders shared an advance copy of a Rejoinder to my original write-up, additional responses whereof are incorporated herein (the text in red).

iPleaders *ad nauseum* claims that the courts will vindicate its stance soon. However, thus far it has only served arbitration notices on NUJS for their pending dues. iPleaders is yet to and is not known to have filed any writ petitions challenging the 32nd NUJS Academic Council's (**AC**) decision to suspend iPleaders' online courses. In fact, iPleaders' students' W.P. No. 25595 (W) of 2018 before the Hon'ble High Court of Calcutta was recently dismissed on the basis that it merely challenged NUJS' belated notices to suspend/ terminate distance education courses and not the 32nd AC's decision itself. I can only explain the legal position that has been accepted by the AC and Executive Council (**EC**) to iPleaders; I cannot understand it for them.

At the outset, I wish to thank iPleaders for revealing the story arc on how their journey began at our common *alma mater*, the WB National University of Juridical Sciences (**NUJS**) and the explanations concerning why iPleaders Memoranda of Understanding were drafted in a certain way. I also did not previously have any access to the financial details that iPleaders mentions in the said piece.

I agree with iPleaders that the various inquiries instituted by the 61st and 62nd NUJS EC meetings dated 12.05.2018 and 29.09.2018, respectively, including the ones dealing with the distance education mess, have not made any meaningful progress.

Indeed, my articles in The Statesman and The Wire and the Student Juridical Association's (**SJA**) recent petitions to the Chief Justice of India and Chancellor of NUJS, Justice Ranjan Gogoi and the EC have highlighted this issue. If iPleaders can actually persuade or compel the NUJS authorities to do a thorough, time-bound inquiry, **more power to iPleaders!**

Before I proceed to clarify my stance, I must underline that I do not represent, advise or hold the brief for NUJS. This entire write-up has been written by me in purely personal capacity. It does not, in any way, represent the views of the present NUJS students, the NUJS administration or my present employer.

While at NUJS, I came across compelling evidence that clearly established violations of distance education regulations mandated by the erstwhile Distance Education Council of the Indira Gandhi National Open University (**IGNOU DEC**) and subsequently the Distance Education Bureau, University Grants Commission (**UGC DEB**) and produced it before the 32nd NUJS AC and the 61st EC. I have never contested iPleaders' claim that NUJS' AC and EC approved many of their courses and/ or appreciated their endeavour. I have only underlined that the powers that be in NUJS never made full and honest disclosures about the necessary legal compliances to the governing bodies. Evidence that became available recently conclusively proves that this was deliberately done.

It also appears that the iPleaders' piece clubs me with unnamed "*others*" and directs me to apologise. I firmly stand by the factual and legal assertions in the three representations *viz*. SJA's petition to the 32nd AC dated 09.05.2018; SJA's petition to the 61st EC dated 11.05.2018 and my recent letter to the Chancellor dated 15.03.2019. I also deny the false, presumptuous and malicious allegation that these representations were unsubstantiated. SJA's representations to the 32nd AC and the 61st EC have been in the public domain since August last year. Therefore, I fail to see why Abhyuday is questioning the obvious substantiation therein.

The founders of iPleaders, in their individual capacities and/ or otherwise, are fully entitled to their interpretations and assumptions, which in my view are entirely misplaced. In the following passages, I attempt to outline the legal position along with providing certain factual clarifications (**ENCLOSURE-1**) and posing certain questions to iPleaders (**ENCLOSURE-2**).

This write-up is by no means exhaustive. Nothing in the iPleaders' piece ought to be deemed to be admitted by me on account of non-traverse or otherwise, unless expressly so stated herein. I will respond more comprehensively at a time and place of my choosing, if the need so arises.

THE UNEQUIVOCAL LEGAL POSITION: WHEN IN DOUBT, DON'T!

Background

The twin thrusts of my stance have always been on: did NUJS ever have the requisite mandatory approvals in place, whether from the erstwhile IGNOU DEC or later from the UGC DEB to be a distance education provider and run the courses (online, offline, hybrid) in partnership with private concerns such as iPleaders or directly under its own name; and in relevant instances, did the private partners such as iPleaders know about the lack of such mandatory approvals? The answer to the first is in the negative, while the answer to the second, as admitted by iPleaders in their piece, is in the affirmative.

In their piece, rather than addressing the first point (regarding lack of the requisite mandatory approvals), iPleaders has sought to raise some rather interesting questions. The primary contention by iPleaders is that distance education regulations mandated by the erstwhile IGNOU DEC and subsequently the UGC DEB were not mandatory at all. In this regard, it appears that iPleaders is not only claiming that its own online courses did not require any mandatory approvals but also making the overbroad assertion that no courses (including offline ones) required such approvals. In my view, such a view is patently erroneous on both counts.

Before delving into the relevant case law, it must be stated for greater clarity that previously IGNOU DEC, in part, regulated distance education. At the time, IGNOU DEC had notified the 'Guidelines of DEC on Minimum Requirements for Recognition of ODL Institutions' (**DEC Guidelines**). On 28.05.2013, a letter was issued to the Vice Chancellors of all Universities informing them that henceforth the UGC DEB will takeover "*all regulatory responsibilities*" of the IGNOU DEC. On 17.06.2013, the UGC DEB adopted the same DEC Guidelines. Admittedly, iPleaders courses took off in 2012. These DEC Guidelines, if mandatory, required detailed compliances and were therefore applicable to all iPleaders courses (offline, online and hybrid) since 2012. In

fact, admittedly, iPleaders assisted in preparing the NUJS' detailed application based on the DEC Guidelines. By iPleaders' own admission, this application, even though dated **26.11.2014,** was curiously sent out and received by the UGC only in **February 2015**. iPleaders appears to claim that NUJS never received any formal response or communication from the UGC DEB in this regard.

On **23.06.2017**, the UGC DEB notified the UGC (Open and Distance Learning) Regulations, 2017 (**ODL Regulations**) in supersession of the earlier DEC Guidelines. The said ODL Regulations were set to be operationalised for the year 2018-19. Meanwhile, all distance education courses (online, offline and hybrid) run in collaboration with private players such as iPleaders were suspended by the 32nd AC held on 10.05.2018 pursuant to SJA's written and oral representation. Two days later, the 61st EC held on 12.05.2018 ratified this AC decision. Thereafter, the UGC DEB notified specialised regulations for online courses *viz.* UGC (Online Courses or Programmes) Regulations, 2018 (**Online Regulations**) on **04.07.2018**, patterned on the same lines as the earlier ODL Regulations. The 62nd EC held on 29.09.2018 subsequently resolved that "*all the online courses shall be stopped forthwith*".

Therefore, since iPleaders' courses were and have been suspended/ terminated since the 32nd AC held on 10.05.2018, there is no question of these ODL Regulations/ Online Regulations' applicability on iPleaders courses run in association with NUJS.

Binding Nature of the DEC Guidelines

The Hon'ble Supreme Court of India has clarified innumerable times that the regulations mandated by the erstwhile IGNOU DEC and the UGC DEB in this regard are mandatorily applicable. The aforesaid three representations that I continue to stand by, contrary to iPleaders assertions, did cite the Hon'ble Supreme Court of India's Judgement in *Annamalai University vs. Secretary to Government, Information and Tourism Department and Ors.* [(2009) 4 SCC 590] (***Annamalai***), relevant excerpts whereof are reproduced hereunder (with underlining for emphasis):

> "*41. Was the alternative system envisaged under the Open University Act in substitution of the formal system, is the question. In our opinion, in the matter of ensuring the standard of education, it is not. The distinction between a formal system and an informal system is in the mode and manner in which education is imparted. The UGC Act was enacted for effectuating coordination and*

determination of standards in universities. The purport and object for which it was enacted must be given full effect.

42. The provisions of the UGC Act are binding on all universities whether conventional or open. Its powers are very broad. The Regulations framed by it in terms of clauses (e), (f), (g) and (h) of sub-section (1) of Section 26 are of wide amplitude. They apply equally to open universities as also to formal conventional universities. In the matter of higher education, it is necessary to maintain minimum standards of instructions. Such minimum standards of instructions are required to be defined by UGC. The standards and the coordination of work or facilities in universities must be maintained and for that purpose required to be regulated. The powers of UGC under Sections 26(1)(f) and 26(1)(g) are very broad in nature. Subordinate legislation as is well known when validly made becomes part of the Act. We have noticed hereinbefore that the functions of UGC are all-pervasive in respect of the matters specified in clause (d) of sub-section (1) of Section 12-A and clauses (a) and (c) of sub-section (2) thereof.

…

55. The submission of Mr K. Parasaran that as in compliance with the provisions contained in Regulation 7, UGC had been provided with information in regard to instructions through non-formal/distance education relating to the observance thereof by itself, in our opinion, would not satisfy the legal requirement. It is one thing to say that informations have been furnished but only because no action had been taken by UGC in that behalf, the same would not mean that an illegality has been cured. The power of relaxation is a statutory power. It can be exercised in a case of this nature.

56. Grant of relaxation cannot be presumed by necessary implication only because UGC did not perform its duties. Regulation 2 of the 1985 Regulations being imperative in character, non-compliance therewith would entail its consequences. The power of relaxation conferred on UGC being in regard to the date of implementation or for admission to the first or second degree courses or to give exemption for a specified period in regard to other clauses in the Regulations on the merit of each case do not lead to a conclusion that such relaxation can be granted automatically. The fact that exemption is required to be considered on the merit of each case is itself a pointer to show that grant of relaxation by necessary implication cannot be inferred. If mandatory provisions of the statute have not been complied with, the law will take its own course. The consequences will ensue.

57. Relaxation, in our opinion, furthermore cannot be granted in regard to the basic things necessary for conferment of a degree. When a mandatory provision of a statute has not been complied with by an administrative authority, it would be void. Such a void order cannot be validated by inaction."

(emphasis supplied)

Evidently, the regulations and circulars released by the UGC DEB with respect to distance education are mandatorily binding on all Universities, including NUJS.

The DEC Guidelines, applicable at the relevant time, required mandatory approvals for all (offline) distance education courses, as relevant excerpts reproduced hereunder show (with underlining for emphasis):

> "*The DEC, as an apex agency, is responsible for recognizing ODL institutions in India. It is mandatory for all institutions to seek prior approval of the DEC for all existing and new programmes offered through distance mode. The guidelines for seeking approval together with necessary proformas for furnishing requisite information are issued by the DEC.*"
>
> (emphasis supplied)

iPleaders' Rejoinder seeks to distinguish *Annamalai* not by citing any legally relevant distinctions in the facts, but by merely mentioning the facts and the disposition in *Annamalai*, thereby claiming an irrelevant dis-analogy. The response evinces a complete lack of depth. In any case, in *Sikkim Manipal University vs. Indira Gandhi National Open University, Distant Education Council and Ors.* [W.P.(C) No. 04 of 2013: MANU/SI/0058/2015], the Hon'ble High Court of Sikkim has cited *Annamalai* and reached a similar conclusion regarding the relaxation of provisions of the DEC Guidelines.

The *Annamalai* decision unequivocally holds that rules and regulations prescribed by the UGC are minimum standards of education and therefore binding on all Universities, especially in matters concerning distance education. However, iPleaders conveniently omits any reference to the paragraphs 41, 42 and 55 (quoted above).

iPleaders further claims that *Annamalai* fortifies their argument that non-recognition by the UGC DEB did not make their courses illegal. Old habits die hard! Unsurprisingly, iPleaders has sought to "*unwittingly misrepresent*" my argument. I cited *Annamalai* to bring forth the broad powers of the UGC and the statutory nature of its extant regulations, not to put across the obvious meaning of the term "illegality" which is defined by the Black's Law Dictionary (Ninth Edition) as: "*an act that is not authorised by law*".

In any case, there are several cases wherein various courts have held that the grant of unrecognised distance education Degrees is, in and of itself, an illegal act. Illustratively, in *Kartar Singh vs. Union of India and Ors.* [C.W.P. No. 1640 of 2008: MANU/PH/3579/2012] (***Kartar Singh***), the Hon'ble High Court of Punjab and Haryana

has clarified (albeit, in the context of technical courses), relevant excerpts whereof hereunder (with underlining for emphasis):

> "*59. The powers and functions of the Distance Education Council are for the promotion of the Open University/Distance Education System, its coordinated development, and the determination of its standards, and in particular which includes, inter-alia, the following: …*
>
> *60. The Distance Education Council issued guidelines in the year 2006 for regulating the Establishment and Operation of Open and Distance Learning (ODL) Institutions in India. It was noticed that distance education mode has become purely commercial venture with little or no attention being paid to the quality of education offered to learners. The Distance Education Institutes requiring approval from DEC includes the conventional universities established by an Act of Parliament or State Legislature/Deemed to be universities declared by the Central Government under Section 3 of the University Grants Commission Act, 1956. It also specified that the Institutions shall furnish undertaking for the following: …*
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> *62. The Distance Education Council (DEC) published a hand-book in the year 2007 for recognition of open and distance learning institutions probably in terms of the above said decision. Such hand-book contemplated that it should be mandatory for all institutions to seek prior approval of DEC for all existing and new programmes offered through distance mode. …*
>
> *219. In terms of the directions of the Commission, it was necessary for the deemed to be Universities to seek approval from AICTE. In view of the above, we hold that the deemed to be Universities have started courses in technical education in violation of the guidelines, instructions, circulars and regulations framed by the Commission not only when they started such courses but also in establishing study centres outside their territorial limits and in subjects for which they were not granted deemed to be university status. Therefore, degrees awarded by such Deemed to be Universities is an illegal act and such illegality cannot be removed or cured by the actions of either the Commission or DEC.*"
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> (emphasis supplied)

Notably, in *Kartar Singh*, the Court is only concerned with the phase when the erstwhile IGNOU DEC was in charge of enforcing the DEC Guidelines. Goes without saying, per *Annamalai*, UGC DEB had far wider powers in this regard once it took over in 2013.

Outright Non-permissibility of Online and Hybrid Courses, Run by iPleaders

Two UGC DEB notices dated 25.01.2016 and 06.10.2016, respectively, are extremely relevant with respect to the outright non-permissibility of online and hybrid courses (including online examinations). The contents of the notice dated 06.10.2016 are reproduced hereunder (with underlining for emphasis):

> "*As you are aware that while seeking recognition for the years 2015-16 and 2016-17, the institutions submitted an affidavit agreeing to various conditions including that "no online programme leading to award of degree/ certification shall be offered by the University/ institution until a policy is framed and approved by UGC in this regard".*
>
> *However, it has been noted by UGC that some institutions/universities which have been approved by UGC to impart education through open and distance learning mode are offering to conduct 'Online Examinations'.*
>
> *The matter was considered and it was observed that creditable online examination system for large number of learners involves a lot of complexity of managerial issues, availability of reliable and robust alternative networks connecting all examination centres, highly secured ICT systems; development of difficulty level based huge question banks etc., requiring heavy initial expenditure and running costs. It was also observed that so far, UGC has not laid down any standard parameters for holding the examinations 'Online'.*
>
> *It is therefore, requested that your university/institution should not conduct 'Online Examinations' until such time that the UGC Guidelines are formulated and made mandatory applicable."*
>
> (emphasis supplied)

This is further corroborated by the following Explanation to Regulation 6(3) of the Online Regulations:

> "*Explanation.– For removal of doubts, it is hereby clarified that prior to these regulations, the commission has not given recognition for an Online Course or Programme to any Higher Educational Institution.*"
>
> (emphasis supplied)

Recently, the UGC DEB clarified in an RTI response that it is yet to approve any online courses. As stated earlier, the Online Regulations were notified on **04.07.2018**. Therefore, **NUJS was never permitted to run the iPleaders' online courses** that it ran up to the SJA's intervention at the 32nd AC held on **10.05.2018** in view of the aforesaid Explanation read with the aforesaid UGC DEB notice dated **06.10.2016**.

In its Rejoinder, iPleaders has sought to label the aforesaid clinching public notice dated 06.10.2016 as a "*tangential circular*". It is settled that by their very nature, circulars are clarificatory. The said circular dated 06.10.2016 merely clarified that online and hybrid courses are not to be conducted till the UGC DEB notified the Online Regulations (04.07.2018). This is the general prohibition on all online and hybrid courses, which was merely clarified, vide the said circular.

iPleaders erroneously argues that since NUJS was not a recipient of the said 06.10.2016 circular, the position of law clarified therein is not applicable to NUJS. Admittedly, this notice was not marked specifically to NUJS since NUJS never had the requisite approvals for even the otherwise allowed offline courses. In effect, iPleaders is arguing that NUJS could exempt 'itself' from the mandatory applicability of a blanket prohibition against all online and hybrid courses applicable to all Universities by simply not complying with the extant DEC Guidelines with respect to its offline courses. Such a suggestion is absurd! No one can benefit from their own wrong. *Annamalai* clarifies that any relaxation is not possible for "*basic things necessary for conferment of a degree*", much less a self-relaxation as argued by iPleaders. In any case, while specifically marked to certain Universities, the said circular was notified to the world at large *via* publication on the UGC DEB website's Notice Board.

Lack of Approval for (otherwise permitted) Offline Courses

Since the DEC Guidelines were mandatorily applicable at the relevant time (2012 – 10.05.2018), to my mind, only one more question remains to be answered: did NUJS have the requisite approvals? Not once has anyone, including iPleaders, ever claimed that NUJS had the requisite mandatory approvals from the erstwhile IGNOU DEC or the UGC DEB. This question is put to rest by a recent response dated 08.03.2019 received from the UGC DEB in response to my 22.01.2019 Right to Information (**RTI**) application.

False Distinction Between Certificate/ Diploma Courses and 'Other' Courses: A Line in the Sand

While slightly convoluted *vis-à-vis* the primary argument pertaining to the so-called optional nature of the UGC DEB's extant regulations, the piece circulated by Abhyuday, makes another erroneous argument claiming, "*very importantly, while the right to confer degrees is specifically conferred upon Universities as per Section 22 of the UGC Act, the provision does not mention diploma or certificate courses*" and further, "*certificate and diploma courses, not being degrees, are treated differently by UGC and the regulatory mechanism*". He eventually and erroneously concludes, "*online courses without UGC recognition could not be termed as illegal*". This claim, that seems to argue that recognising (and not recognising) 'Certificate'/ 'Diploma' courses was earlier outside UGC DEB's jurisdiction, is clearly belied by references to

both Degrees and Certificate/ Diploma courses in the DEC Guidelines. For instance, the DEC Guidelines recommend, "*it is desirable to have programmes quantified in terms of credits*" and further prescribes the following norms for such a credit system, as excerpted hereunder:

Table 1.1

Norms for offering programmes through distance mode based on credit system

Level of the programme	No. of credits	Duration† Minimum
Certificate	12-18	6 months
Diploma/PG Diploma	28-36	1 year
Bachelors Degree (General/Professional)	96-100	3 years
Bachelors Degree (Technical)	160-165	5 years
2nd Bachelors Degree	48	1 year
Master Degree	64-72	2 years
Master's Degree (Technical/ Professional)	96-124	3 years
M. Phil	48	1 ½ years
Ph.D (without M.Phil) (plus 32-36 credits)	64-68	4 years
Ph.D (with M.Phil) (course work)	64-68	2 years

– The credits also determine the volume of course content, number of counseling sessions and assignments which are also given in the table 1.2.

The DEC Guidelines yet again refer to both Degrees and Certificates/ Diplomas, as excerpted hereunder:

Handbook 2009

III. Academic Programmes & Faculty Position:

Number of programmes on offer (Specify programmes) as:

	Awareness programs	Certificate	Diploma	UG	PG	PG Diploma	Research degrees	Total
General								
Professional								

This is further corroborated by the fact that UGC DEB *vide* its notice dated 16.12.2016, in fact, informed that:

> "*It has been decided that IGNOU, New Delhi and State Open Universities (S0Us), which has got approval from UGC to offer programmes through distance mode, may be allowed to offer Certificate and Diploma programmes of the duration of one year or less in non-technical, non-medical, non-para medical fields and excluding the programmes which require hands on training.*"
>
> (emphasis supplied)

It is pertinent to clarify here that such an approval was deemed to have been granted to already sanctioned State Open Universities and the IGNOU for running offline Certificate and Diploma programmes only. Contrary to iPleaders' misleading claims, the very fact that the extant Online Regulations now recognise compliant 'Diploma' and 'Certificate' courses establishes that the term "Degree" as used at various places in Section 22 of the UGC Act, 1956 always included them. The Hon'ble Supreme Court of India has implicitly clarified this in *Annamalai* while discussing the broad nature of UGC's powers.

Admittedly, iPleaders assisted in preparing the NUJS' detailed application based on the DEC Guidelines and did, in fact, fill in the 2009 Handbook with the details of (presumably all) its online Diploma/ Certificate courses at the time. However, iPleaders is now turning around and curiously seeking to draw this convenient line in the sand to justify the obvious illegalities.

An argument materially similar to iPleaders' contention has been rejected by the Hon'ble High Court of Madras (albeit, in the context of medical education) in *Dr. V. Balaji and Ors. vs. Union of India and Ors.* [W.P. No. 18829 of 2008: 2008 (6) CTC 568], as excerpted hereunder (with underlining for emphasis):

> "*20. A perusal of the changes made by the 42nd amendment in the State List and the Concurrent List would unmistakably show that the intention which is reflected by the said amendment is to confer the Parliament with an extensive power to legislate in the field of higher and technical education in order to maintain uniform standards throughout India and to take away from the State List legislative power by deletion of Entry 11 and also by amending Entry 25 of the Concurrent List. Therefore, the State's exercise of executive power must be made consistent with the aforesaid constitutional Scheme of curbing of its legislative power in respect of higher and technical education. If the State cannot make law in an area in view of lack of its legislative competence, as it cannot do in the field of higher and technical education, especially when it is occupied by the said Act, which is a central law, it cannot issue executive orders in that area. That is the mandate of Article 162.*
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> *21. The argument of the learned counsel for the State that since the certificate course in the field of medical education is not a recognized qualification under the*

schedule to the said Act, the State does not need the permission of the Central Government or the Medical Council of India to start the said certificate course is equally untenable. If the State's argument is upheld, then it would amount to allowing the State to run a parallel course, whether it is an under-graduate or post-graduate course of 6 months or one year, even though it is contrary to any post-graduate course, which is run with the permission of the Medical Council of India. In the instant case, it has been admitted by the State that the Post Graduate Medical Course is now running in Medical Colleges in the State with the permission of the Medical Council of India. Therefore, by the impugned G.O the State is seeking to introduce in exercise of its so-called executive power, a course of a different nature on the same subject, may be for a smaller duration, and by giving it a different name. The same is nothing but a course in medical education.

22. To our judgment, this is clearly not permissible having regard to the constitutional scheme discussed above which controls the legislative power of the State in higher and technical education. A Certificate Course in Diabetology, which is a speciality, certainly falls in that category.

...

28. It is, therefore, clear that State cannot by introducing the course in medical education bring about a situation in which it is impossible to ensure co-ordination in matters of medical education by MCI. If the Court allows the Certificate Course introduced by the impugned G.O. to go on, in that case in diabetology there will be two parallel courses one is for one year with the permission of MCI and the other is a Certificate Course in Diabetology without its permission. This is certainly incompatible with a 'common pattern of action' and can be prevented in view of Entry 66 of List I. In other words, without the permission of the Central Government and MCI, no course in medical education, even if it is a certificate course in diabetology can be started. Apart from the provisions of Article 162, which provides that the executive power of the State cannot be extended to areas in respect of which it cannot exercise legislative power, the executive power of the State is also subject to other constitutional limitations."

(emphasis supplied)

Evidently, the aforesaid decision belies iPleaders' argument regarding special treatment of Diploma/ Certificate courses as well as iPleaders' argument regarding the special status of a statutory State Government university such as NUJS. It further appears to suggest that in matters of education, extant regulations of Central Government's statutory regulator(s) are considered to exhaustively lay down the contours of permissibility.

With respect to the aforesaid notice dated 16.12.2016, I merely sought to show that there is no difference in UGC's power to regulate various types of courses, including Certificate and Diploma courses. In this regard, iPleaders now unequivocally admits that the UGC DEB has jurisdiction to regulate Certificate and Diploma courses but claims that the UGC DEB never exercised such a jurisdiction till the Online Regulations were notified in 2018. This is entirely untrue and belied by the clarificatory circular

dated 06.10.2016, quoted above. The DEC Guidelines, as quoted above, made prior approval by the erstwhile IGNOU DEC and its successor, UGC DEB mandatory for all institutions, for all distance educations courses including Diploma/ Certificate courses.

In any case, when a general prohibition on all online and hybrid courses is applicable (as shown earlier), the lack of a specific prohibition cannot justify the practice. It is clear that the UGC had the power to and did impose a general, blanket prohibition on all Universities from offering any form of online or hybrid courses till the notification of the Online Regulations on **04.07.2018**. On innumerable occasions, the Hon'ble Supreme Court of India has held that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden. The DEC Guidelines, having always had statutory force, only permitted offline courses. Online and hybrid courses were only allowed in 2018. Therefore, it is completely incorrect to argue that NUJS could have run online and hybrid courses in collaboration with iPleaders outside the permissible purview of the said DEC Guidelines. In view of the foregoing, it appears that this contention by iPleaders is a confused afterthought.

I further clarify that state 'open' universities and statutory universities are not mutually exclusive categories, as claimed by iPleaders (illustratively, Netaji Subhas Open University is a statutory university).

As an aside, at multiple instances, iPleaders has relied on an ingeniously invented false dichotomy between the UGC DEB approvals required by statutory Central/ State Universities and other (non-statutory) Universities, thereby arguing that NUJS' power to commence Diploma/ Certificate courses was not subject to UGC DEB's jurisdiction. This is completely incorrect, as shown conclusively by the above quoted paragraphs, particularly 61 and 62, from *Kartar Singh*.

In its Rejoinder, iPleaders has further invented another false dichotomy and states, "*UGC did not concern itself with recognizing courses that were of 1 year or less duration*". As the concern that has *ad nauseum* complained about the lack of substantiation in my arguments, I hope iPleaders will be able to furnish a shred of evidence to support this imaginary line in the sand. On my part, I rely on Table 1.1 of the DEC Guidelines (reproduced above), whereby the recommended length of a 12-18 credit Certificate course is prescribed as 6 (six) months.

Reliance on a Purported RTI Response to Interpret the Unequivocal Provisions of the Law

iPleaders also seeks to selectively quote a purported Right to Information (**RTI)** response by the UGC DEB to interpret the aforesaid mandatory provisions of law as optional. I do not seek to justify the seemingly sloppy response by the UGC DEB to the purported RTI cited by iPleaders. However, it is settled law that RTI is a tool to access information and pre-existing documents and cannot be used to seek legal assistance, which requires the services of a legal counsel/ consultant. The first query of this purported RTI is in the nature of a purely legal query addressed to the UGC DEB and therefore, an interpretation thereof is not credible at all. Therefore, the distinction between recognition for Central Government's recruitment purposes and the illegality of such unapproved (offline and prohibited online and hybrid) courses, artificially sought to be drawn by iPleaders, is entirely misconceived and has no basis whatsoever under the relevant law. The said artificial distinction, which is based on a convenient interpretation of the corresponding answer to the said first query, is infected by conceited contextomy. In any case, an RTI response is neither justiciable nor a statutory instrument. A public authority under the RTI Act, 2005 is neither a court of law nor a court of record. An RTI response ought to not be interpreted like a statute, especially in teeth of the express mandate of statutory law as shown above.

Irrelevant Name-dropping

As an aside, the said piece indulges in serial name-dropping at many places to justify the obvious illegalities. I do not feel the need to respond to such legally irrelevant banter. I am not concerned with the UGC DEB allegedly having a weak history of enforcements or with why certain big names are yet to receive notices from the UGC DEB. However, I have provided a factual clarification on this point as well at **ENCLOSURE-1**.

I really hope that iPleaders' proposed appeal to the EC will force NUJS to be more transparent in its dealings with the distance education mess. I have always wanted this matter (along with other statutory violations/ illegalities) to be discussed threadbare and meaningful action taken.

CERTAIN FACTUAL CLARIFICATIONS: A LIE HAS MANY VARIATIONS, BUT THE TRUTH NONE!

A. School of Distance and Mass Education's responsiveness

"*Anybody interested to know the truth could have asked the School of Distance and Mass Education for the information and would have promptly received it as I did.*"

- This statement is contrary to the claims of dozens of iPleaders' students regarding the non-responsiveness of the School of Distance and Mass Education's (**SDME**) Director, Prof. Anirban Mazumdar in W.P. No. 25595 (W) of 2018, which was dismissed by the Hon'ble High Court of Calcutta *vide* Judgement dated 01.03.2019.

- As mentioned earlier, the 62nd EC held on 29.09.2018 had resolved, "*all the online courses shall be stopped forthwith*". As a result, Registrar (Acting) Ms. Shikha Sen wrote to the SDME's Director, Prof. Mazumdar on 01.10.2018 directing him to take necessary action for giving effect to the aforesaid 62nd EC decision and to deal with all further communications received in this regard.

- The 63rd EC's Agenda Notes (at Agenda No. 6) included the said letter from Ms. Sen to Prof. Mazumdar. Prof. Mazumdar audaciously refused in his letter dated 03.10.2018 to respond to the clueless distance education students' queries regarding the suspension of distance and online education courses by simply citing unnamed "*personal reasons*"?!

- Thereafter, the 63rd EC is known to have severely (albeit, verbally) reprimanded Prof. Mazumdar for his non-responsiveness. At the 63rd EC, his request to be relieved from the duty of communicating with the students of the terminated iPleaders' courses was specifically rejected by the EC. At the same time, the EC directed the involved iPleaders' course coordinators, **Ms. Vaneeta Patnaik and Ms. Sujata Roy** to assist Prof. Mazumdar in taking necessary steps for effecting smooth termination of the online courses.

- Shocked by this state of affairs, I had filed an RTI application with the NUJS Public Information Officer (**PIO**), Mr. Pritwish Saha on 25.01.2019. When the PIO was pursued by me for a proper response, I found it disturbing that he would repeatedly (albeit, verbally) respond saying that the answers were, in fact, framed in consultation with the **Registrar (Acting), Ms. Shikha Sen and SDME's Director, Prof. Mazumdar**. As

expected of the veteran RTI-dodger, Mr. Saha, he gave a highly evasive response. Aggrieved, I was constrained to prefer an RTI appeal dated 22.03.2019 before Ms. Sen.

- Reportedly, SDME's Director, Prof. Mazumdar was yet again sharply reprimanded (albeit, verbally) by the 65th EC. However, it appears that in line with the record of poor minuting of University governing bodies' meetings, there is no mention of any particulars against the relevant Agenda No. 9.

B. Deemed relaxation of the mandatory approval requirement on account of UGC DEB's alleged failure to perform its statutory function to recognise new universities

"*In other words, in spite of an instrument that validly existed, UGC did not perform its statutory function to recognize new universities for distance education, until new regulations were issued, four years after 2013.*"

- This statement is factually incorrect. Multiple approval lists, illustratively, dated 26.05.2015; 16.02.2016; 26.08.2016; 26.10.2017; 09.08.2018; 03.10.2018 and 21.02.2019 make evident that such approvals were, in fact, granted to new institutions, thereby belying iPleaders' suggestion that the UGC DEB failed in discharging its statutory function on this count. The differences in the aforesaid lists establish the addition/ removal of certain universities from the list of approved distance education institutions over these distinct periods. In its Rejoinder, iPleaders "*unwittingly represents*" that between 2013 and 2017, the UGC DEB only 'renewed' the recognitions already granted by the erstwhile IGNOU DEC and did not issue recognition to any new Universities. This is false as is clearly borne out by the differences in the aforesaid lists dated 26.05.2015 (127 entries), 16.02.2016 (106 entries) and 26.08.2016 (145 entries). Notably, entry no. 106 in the list dated 16.02.2016 is National Law School of India University.

- In any case, the Hon'ble Supreme Court of India in *Annamalai* clarifies that UGC's failure to take action against non-compliant universities cannot be seen as an automatic approval for the offending distance education courses. Further, *Annamalai* clarifies that relaxation cannot be granted by the UGC DEB *ex post facto* or by necessary implication. Therefore, there is no question of iPleaders' NUJS online courses having been automatically deemed approved on account of UGC DEB's alleged inaction in granting new approvals, following iPleaders' unmaintainable (all online courses were prohibited) purported application through NUJS.

QUESTIONS FOR IPLEADERS

Certain things pique me. iPleaders is not obligated to respond but I will question them anyway:

- Why is iPleaders so concerned by the suggestion that NUJS should hold the guilty insiders *viz.* **former Vice Chancellor, Prof. P. Ishwara Bhat; SDME Director, Prof. Anirban Mazumdar; former Registrars (Acting) Dr. R. Parameshwaran and Dr. Sarfaraz Ahmed Khan; Assistant Professor, Ms. Vaneeta Patnaik; and Prof. Sandeepa Bhat** (after due investigations) financially liable for the refunds and litigation costs that NUJS has already suffered and will likely suffer on account of their misconduct? Surely such individuals can defend themselves. Have these individuals already sought assistance from iPleaders or is the latter obligated, morally or otherwise, to volunteer assistance?

- Since iPleaders feels wronged, why did they not approach the EC earlier, especially when NUJS' administration was being unresponsive (as against SDME which iPleaders wrongly believes to be responsive)? It has been nearly a year since the courses were "suddenly" stopped. That said, I am happy that iPleaders is now appealing to the EC. Hopefully, this will put some pace and rigour into the painfully slow-paced EC instituted inquiries.

- iPleaders has stated that it let the students know that their courses are not recognised by the UGC DEB, but their students took the courses anyway. How does that affect the fact that NUJS violated the mandatory regulations notified by the erstwhile IGNOU DEC and later the UGC DEB for distance education courses? These regulations clearly stated that requisite approvals will need to be secured mandatorily, while UGC notices blanketly prohibited online and hybrid courses till **04.07.2018**. Students and iPleaders were, legally speaking, in no position to waive the mandatory requirements of law applicable to NUJS for obtaining such requisite approvals and to the concerned students for receiving such certification. In any case, did iPleaders always issue such disclaimers when they first started under Prof. M.P. Singh's tenure? Having seen previous application forms as a part of iPleaders' students' pleadings in W.P. No. 25595 (W) of 2018, I contest this entirely untrue claim. Did the disclaimer also explain the consequences of signing up for a course that is not recognised by the IGNOU DEC/ the UGC DEB?

- What about the fact that iPleaders consulted tax experts who stated that courses that did not have the requisite IGNOU DEC/ UGC DEB approval(s) are liable to attract Service Tax and now the Goods and Services Tax? What's the current status of that wrinkle?

  Unexpectedly, iPleaders responded to the aforesaid questions in their Rejoinder. Expectedly, those answers were as evasive as the rest of their case and consistent with NUJS' PIO and SDME Director's evasiveness on the issue. Since iPleaders is so sure that "*a lot of lawyer will be reading it*", I too leave it to such lawyers to be the judges of iPleaders' evasiveness and complicity!